**THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

**W.P.No. 20168 OF 2005**

**27th September, 2005.**

Between:

Syed Iqbal Hussain …Petitioner

A N D

1.Assistant Divisinal Engineer,

Distribution –7, Hyderabad City and another

….Respondent

**THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

**W.P.No. 20168 OF 2005**

**ORDER:**

1. When WPMP No. 25664 OF 2005 came up for hearing, both the counsel

consented for disposal of the main writ petition itself. Hence, the writ petition is taken up for hearing and is being disposed of by this order.

2. This writ petition has been filed by Syed Iqbal Hussain with a prayer to issue order, direction or a writ more particularly one in the nature of a writ of mandamus declaring the proceedings of the Assistant Divisional Engineer, Distribution-7 bearing No. HDC/DO7/01693/DP1/05, dated 01-09-2005 as arbitrary illegal and without jurisdiction.

3. The petitioner is running a Water Supply Company under the name and style as "Shalimar Water Supplies" at 165 Spl. "C' Class, C.I.B., Quarters, Kachiguda since 1995. In the month of November, 2004, the officials of electricity (A.P. Transco) Department inspected the power connection and the meter of the petitioner, and advised him to change the meter. Accordingly, the petitioner gave his consent and meter came to be replaced. Again on 9-8-2005 the staff of Assistant Engineer Operation (Barkatpura), Kachiguda, APCP DCL, Hyderabad has inspected the premises and informed the petitioner that meter is defective and it needs to be changed. The petitioner did not object for change of the meter in spite of the fact that existing meter was in good working condition. On 18-8-2005 the petitioner received a letter informing that the said meter which was taken away by the staff of the Assistant Engineer on 9.8.2005 was inspected and found that the side seals are in tampered conditions and the petitioner has been asked to attend MRT Lab for test of meter on 20-8-2005 at 2-00 p.m. at A.P. Housing Corporation Building, Urdugalli, Himayatnagar, Hyderabad. It appears a case has been registered against the petitioner in Crime No. 1529 of 2005 for pilferage of energy. The provisional assessment notice came to be passed by the Central Power Distribution Company of Andhra Pradesh Limited estimating the value of energy pilferage at 58547 and directing the petitioner to pay Rs.29,273-50 for restoration of supply pending enquiry. Assailing the provisional notice, the petitioner has filed this writ petition.

4. Heard the learned counsel for the petitioner and learned standing counsel appearing for Transco.

5. The learned counsel for the petitioner submits that value of the pilferage has been estimated without giving any opportunity to the petitioner. He further submits the payment of Rs. 29,273.50 for restoration of the supply without giving an opportunity to the petitioner to offer an explanation amounts to violation of principle of natural

justice. In support of his submission, he relied on the judgment of the Division Bench of High Court in W.A.No. 452 of 2004 and 477 of 2004 (M/s Mallikarjuna Polishing Industries Vs. Chief Managing Director and others). It is trite to refer the relevant portion in the judgment of Division Bench and it is thus;

> *"Obviously, the provisional notice was issued under the terms and conditions issued under the Electricity ( Supply) Act, 1948, which stood repealed by the Electricity Act, 2003, which came into force with effect from 10-6-2003. Chapter XII of the new Act deals with the investigation and enforcement. Section 126 provides for the process for making assessment, provisional and final, if on an inspection the equipments, gadgets, machines, devices are found to be tampered with or there is unauthorized use of electricity. There is no such power, while issuing provisional assessment, to forthwith stop or disconnect electricity supply Provisional assessment is in the nature of a show cause notice against which the consumer is entitled to have an opportunity of hearing before passing final order of assessment by the concerned authority. As such the notices dated 7.1.2004 will be deemed to have been issued only under Section 126 of the Electricity Act under which there is no authority or power to respondents to discontinue or disconnect the electricity supply or call upon the appellants to pay even part of the provisional assessment amount till final assessment is made. Only on the appellants not complying with the final assessment orders, the respondents can proceed further in the matter and that will also be subject to the appeals to be filed by the appellants. Consequently, we allow the appeals, set aside the impugned order passed by the learned single Judge and allow the writ petitions with a direction that electricity supply to the premises of the appellants shall be restored forthwith and the concerned authority will proceed to pass final order in the facts and circumstances of the case after affording opportunity of being heard to the appellants. Obviously, any amount paid by the appellants pursuant to the provisional notice will be liable to be adjusted against the amount to be finally assessed by the concerned authority".*

6. The learned counsel for the petitioner submits that Section 152 of the Indian Electricity Act, 2003 provides compounding of offence and the petitioner has option either to agree for compounding the offence with the authorities or face criminal prosecution. I make myself very clear that this Court is not concerned with the criminal case registered against the petitioner in Crime No. 1529 of 2005. Under the provisional order, the petitioner has been asked to pay Rs. 29,273.50 for restoration

of the supply.

7. It has been held by the Division Bench in the case cited supra that the provisional order is to be read as show cause notice and in which case, the petitioner has to submit his explanation, which is required to be considered by the authorities and pass final assessment orders.

8. In that view of the matter, the writ petition is disposed of treating the provisional assessment notice as show cause notice and giving liberty to the petitioner to submit explanation to the provisional assessment notice, within two weeks from the date of receipt of a copy of this order and thereupon, the competent authority has to pass appropriate orders thereon. No order as to costs.

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B.Seshasayana Reddy,J

27th September, 2005.

C.C. in three days.

B/o

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**THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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